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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of MAURICE and ISABEL GILBERT.	
MAURICE GILBERT, Appellant, v. ISABEL BARRIOS-GILBERT, Respondent.	E070292 (Super.Ct.No. RID211542) OPINION

APPEAL from the Superior Court of Riverside County. Christopher B. Harmon, Judge. Affirmed.

Maurice Gilbert, in. pro. per., for Appellant.

No appearance for Respondent.

Appellant Maurice Gilbert (Father) and respondent Isabel Barrios-Gilbert (Mother) share a son, who was born in August 2004. In August 2005, Father petitioned for dissolution of his marriage to Mother. The family court's termination of Father and

Mother's marital status became effective on November 29, 2006. In July 2014, the family court ordered Father to pay $338 per month for child support. In November 2016, in a single request for an order, Mother (1) requested to modify the child support order, and (2) requested an order for a forensic accounting of Father's business. In January 2017, the family court ordered a forensic accounting of Father's business. (Evid. Code, § 730.) In May 2017, the family court ordered Father to pay $1,233 per month in child support.

In July 2017, Father filed a request for an order, and attached a variety of motions to the request. Father included motions to (1) strike Mother's November 2016 request; (2) vacate the family court's order modifying child support; and (3) quash service of various documents, including Mother's November 2016 request. The family court denied Father's request for an order. Father contends the family court erred by denying his request for an order. We affirm the order.

FACTUAL AND PROCEDURAL HISTORY

A. BACKGROUND INFORMATION

In August 2005, Father petitioned for dissolution of his marriage to Mother. On August 22, 2006, Mr. Isles filed a motion to be relieved as Father's counsel. On October 19, 2006, the family court held a hearing on Mr. Isles's motion to be relieved, and the family court granted the motion.

On June 20, 2009, a qualified domestic relations order (QDRO) was filed in the case by Father's attorney, Mr. Scott. In that document, Father's address was listed as "P.O. Box 542 [¶] San Bernardino, CA 92402." In June 2014, Father, who was self-

represented, filed an income and expense declaration listing the same address. On July 7, 2014, a child support order was entered requiring Father to pay $338 per month. The July 2014 child support order was based upon Father having a monthly gross income of $1,305.

B. MODIFICATION OF CHILD SUPPORT

On November 28, 2016, in a single request for an order, Mother (1) requested the court modify the child support order, and (2) requested the court order a forensic accounting of Father's business. Mother estimated Father's monthly gross income was $10,000. Mother sought a forensic accounting of Father's "business for both value and cash flow to determine [Father's] true income." Mother's notice for her request reflected a hearing would be held on January 31, 2017, in Department F501. A proof of personal service reflected a registered California process server personally served Father on January 13, 2017, with Mother's November 2016 request for a child support modification.

On January 31, in Department F402, the family court, in particular Judge Harmon, held a hearing in the case. Father did not appear at the hearing. The family court ordered a forensic accounting of Father's business. (Evid. Code, § 730.) The court continued the matter to March 28 in Department F402. Mother's attorney drafted a combined notice of (1) the continued hearing date, and (2) the order for a forensic accounting. Connie Billings mailed the notice to Father at P.O. Box 542 San Bernardino, CA 92401.

On March 28, the family court, in particular Judge Harmon, held a hearing in the case in Department F402. Father was not present at the hearing. Mother's attorney discussed issues with the court. The court ordered Father "to file and serve an Income and Expense Declaration 10 days prior to the next court date." The court continued the matter to May 16 in Department F402. Mother's attorney drafted a combined notice of (1) the continued hearing date, and (2) order for Father to file and serve an income and expense declaration. Connie Billings mailed the notice to Father at P.O. Box 542 San Bernardino, CA 92401.

On May 16, the family court, in particular Judge Domnitz, held a hearing in the matter. Father was not present at the hearing. The family court asked how Mother arrived at the estimate that Father has a gross monthly income of $10,000. Mother's attorney responded, "That was based on [Mother's] knowledge from being married to him. We also hired a private investigator who has determined he's making close to $200 an hour." The private investigator's report reflected Father performed heating and air conditioning repair work and charged approximately $200 per hour for labor. The private investigator was O & O Investigations.

Mother explained to the family court that Judge Harmon ordered a forensic accounting of Father's business. The family court responded, "Yeah, but [Father is] not participating." The family court said, "Child support is based upon the printout, Xspouse, based upon the information and evidence that is in the record, and [Father's] total lack of cooperation. The Court finds that he is earning at least $10,000 a month." The family court ordered Father to pay $1,233 per month in child support.

C. FATHER'S REQUEST FOR AN ORDER

On July 17, 2017, Father filed a request for an order. Father used Judicial Council form FL-300 for his request. On the front of the form, Father marked the boxes next to "Child Support" and "Other." Next to the "Other" box, Father wrote, "motions to strike, Quash & vacate 12 motions attached." On page three of the form, in the child support section, Father explained that he was seeking an order vacating the May 16 child support modification order. On page four of the form, in the "other orders requested" section, Father wrote, "motion to quash service of subpoena, RFO, minute order, mailed service of RFO from c/s serv. & Respondent, O & O Report, notice & Rulings, notice of continuance, notice of cont. w/proof, motion to strike RFO, motion to strike O & O Report."

Father attached a variety of motions to his request for an order, including:

(1) a motion to strike Mother's November 2016 request;

(2) a motion to quash service of a notice of continuance filed by Mother on April 4, 2017;

(3) a motion to quash service of a notice of continuance filed by Mother on February 14, 2017;

(4) a motion to quash service of a notice of ruling filed by Mother on February 14, 2017;

(5) a motion to quash service of the private investigator's report filed by Mother on February 12, 2017;

(6) a motion to quash the service by mail on November 30 of Mother's request for an order filed on November 28, 2016;

(7) a motion to quash the service by mail on December 9 of Mother's request for an order filed on November 28, 2016;

(8) a motion to quash the personal service of Mother's request for an order filed on November 28, 2016;

(9) a motion to quash service of the March 28, 2017, minute order filed by Mother on April 4, 2017;

(10) a motion to quash service of a subpoena served on May 30, 2017;

(11) a motion to strike the private investigator's report; and

(12) a motion to vacate the family court's May 16, 2017, order modifying child support.

In the motions to quash, Father made a variety of arguments. One argument concerned Mother failing to properly serve Father because Mother used an incorrect zip code when mailing documents to Father. A second argument was that Mother failed to served Father's attorney of record, Mr. Isles.

In the motion to vacate, Father asserted he did not receive notice of the May 16, 2017, hearing in Department F402. Father asserted Mother's notices were mailed to the wrong zip code and Mother failed to serve Father's attorney of record, Mr. Isles. Father asserted Mother's notice for the January 31 hearing incorrectly reflected a hearing would take place in Department F501. Father further asserted that he was not

personally served. Father argued his federal constitutional right of due process was violated by the various notice violations.

D. MOTHER'S RESPONSE

Mother opposed Father's request for an order. Mother included her declaration with her opposition. Mother declared that a process server personally served Father with Mother's November 28, 2016, request for an order. Mother declared, "The process server, Steve Mundy, personally served him on January 13, 2017 during a custody exchange by approaching him as he got into his vehicle. He refused to accept the papers in his hand so Mr. Mundy placed the papers on the hood of his car. [Father] simply drove off letting the documents fall to the ground."

Mother further declared that Mr. Isles was relieved as Father's attorney in October 2006. Mother asserted Father's last attorney was R.E. Scott, who filed a notice of withdrawal in June 2009. Mother contended Father had been self-represented since June 2009. Additionally, Mother declared, "According to my attorney's office 'No mail sent to [Father] was ever returned as undeliverable.' "

Mother also provided the declaration of Steve Mundy, the process server. Mundy declared that he approached Father, while Father was in his vehicle. Mundy told Father that he had documents for him. "[Father] refused to open the door or roll down the window so [Mundy] could hand the papers to him, so [Mundy] set them on the hood of [Father's] vehicle in front of him, and told him he'd been served, and walked away. After the child got into the vehicle, [Father] drove off causing the documents to fly off his car and land on the ground."

E. HEARING

On October 12, 2017, the family court, in particular Judge Harmon, held a hearing on Father's request for an order. Father said, "I ask that that service be quashed. It's not been served upon the attorney of record, which that being needed because there's no proof of being mailed to the correct zip code or no address at all." Mother's attorney responded, "[T]he bottom line is he was served on January 13, 2017, by personal service." Mother's attorney continued, "[H]e received all of those notices, because one, none of them came back. Two, he appealed those orders after he got notice, so we know he received notice."

Father said he was not trying to avoid the court or service of court documents. Father explained the problem was that he had "no income." The family court explained to Father, "Well, and you can always file a motion in the future to modify support if you think there's a change of circumstances or if you believe that the order made previously was not accurate."

At the conclusion of the hearing on Father's request, the family court said, "I'm going to deny your motion in its entirety. I don't believe there's any legal grounds for the Court to grant any of the relief you've requested here today. I do believe that you were served. I don't believe you've met your burden to demonstrate even a prima facie showing that you were not served with the notice of the hearing. So again, the motion is denied in its entirety. [¶] . . . [I]f you believe that the order was made in error or there's been a change of circumstances since then, [you can] always file a request to

modify support. Support is always modifiable. And I'd be happy to take a look at that for you."

DISCUSSION

A MOTIONS TO STRIKE

Father contends the family court erred by denying his motions to strike (1) Mother's request to modify child support, and (2) the private investigator's report.

We apply the abuse of discretion standard of review. (*Doe v. United States Youth Soccer Assn., Inc.* (2017) 8 Cal.App.5th 1118, 1123, fn. 2.) The law provides that "[a]ny party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof." (Code Civ. Proc., § 435, subd. (b)(1).) "The term 'pleading' means a demurrer, answer, complaint, or cross-complaint." (Code Civ. Proc., § 435, subd. (a)(2).)

In Father's motions to strike, he asserted he was relying on Code of Civil Procedure section 436, which provides, "The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: [¶] (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court."

"In a family law proceeding under the Family Code: The term 'request for order' has the same meaning as the terms 'motion' or 'notice of motion' when they are used in the Code of Civil Procedure." (Cal. Rules of Court, rule 5.92(a)(1)(A).) Thus, Father filed a motion to strike in response to Mother's motion to modify child support. A

motion to strike is not a proper response to a motion. A motion to strike is only proper in response to a demurrer, answer, complaint, or cross-complaint. (Code Civ. Proc., § 435, subds. (a)(2) & (b)(1).) Accordingly, the family court did not abuse its discretion by denying Father's motions to strike.

Father asserts a request for an order is a pleading. Father supports his assertion by citing California Rules of Court, rule 5.74(a)(1) (rule 5.74(a)(1)), which provides, " 'Pleading' means a petition, complaint, application, objection, . . . request for orders, . . . filed in proceedings under the Family Code." Rule 5.74 pertains to service of papers. (See e.g. Cal. Rules of Court, rule 5.72 [service requirements].) Father's reliance on rule 5.74(a)(1) is not persuasive because Father is trying to apply the definition from rule 5.74(a)(1) to a statute within the Code of Civil Procedure. It is California Rule of Court, rule 5.92(a)(1)(A) that defines a "request for order" within the Code of Civil Procedure. Under rule 5.92(a)(1)(A), a request for order is a motion—it is not a pleading. Accordingly, we find Father's argument to be unpersuasive.

B. MOTIONS TO QUASH

Code of Civil Procedure section 418.10 provides: "A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: [¶] (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her. [¶] (2) To stay or dismiss the action on the ground of inconvenient forum. [¶] (3) To dismiss the action pursuant to the applicable provisions of Chapter 1.5 (commencing with [Code of Civil Procedure] Section 583.110) of Title

8." Code of Civil Procedure section 583.110 *et seq*. concerns dismissals due to delays in prosecuting the case. (Code Civ. Proc., § 583.130.)

In Father's request for an order, he included motions to quash service of Mother's (1) notices of the continued hearings that occurred on March 28 and May 16; and (2) notice of Mother's November 2016 request to modify child support. Father cited Code of Civil Procedure section 418.10 to support his motions to quash. Father did not cite a subdivision of Code of Civil Procedure section 418.10. Therefore, it is unclear on what procedural basis Father brought his motions to quash, e.g., a lack of personal jurisdiction, an inconvenient forum, or a delay in prosecution. (Cal. Rules of Court, rule 3.1110(a) ["A notice of motion must state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order"].)

On appeal, Father contends the family court erred by denying his motions to quash because Father did not receive proper notice of Mother's request for an order and the continued hearing dates. A lack of notice is not a proper basis for a motion to quash. (Code Civ. Proc., § 418.10, subd. (a).) Father does not explain how the lack of notice would relate to (1) a lack of personal jurisdiction; (2) an inconvenient forum; or (3) a delay in prosecution. (Code Civ. Proc., § 418.10, subd. (a).) Because Father is asserting the family court erred due to Father not having received notice, and lack of notice is not a proper basis for a motion to quash, we conclude the family court did not err.

In other sections of Father's appellant's opening brief, he asserts the family court lacked personal jurisdiction over Father. The family court had personal jurisdiction

over Father in the dissolution action. Father submitted himself to the family court's jurisdiction by petitioning for dissolution of his and Mother's marriage. (*Mikulski v. Mikulski* (1969) 2 Cal.App.3d 1047, 1051.) The family court has continuing personal jurisdiction over Father for matters of child support. (Code Civ. Proc., § 410.50, subd. (b); *Bergan v. Bergan* (1981) 114 Cal.App.3d 567, 570-571; *Leverett v. Superior Court* (1963) 222 Cal.App.2d 126, 132.) Accordingly, the family court had personal jurisdiction over Father. Therefore, we conclude the family court did not err.

C. MOTION TO VACATE

1. *CONTENTION*

Father contends the family court erred by denying his motion to vacate the order modifying child support. Father's motion to vacate was based upon the family court's modification order allegedly being void. (Code Civ. Proc., § 473, subd. (d).)

2. *LAW AND STANDARD OF REVIEW*

"The court may, upon motion of the injured party, or its own motion, . . . set aside any void judgment or order." (Code Civ. Proc., § 473, subd. (d).) "The inclusion of the word 'may' means that even if the trial court determines the order or judgment was void, it still retains discretion to set the order aside or allow it to stand. [Citations.] The reviewing court generally faces two separate determinations when considering an appeal based on [Code of Civil Procedure] section 473, subdivision (d): whether the order or judgment is void and, if so, whether the trial court properly exercised its discretion in setting it aside." (*Nixon v. Peabody LLP v. Superior Court* (2014) 230 Cal.App.4th 818, 822.)

"In determining whether an order is void for purposes of [Code of Civil Procedure] section 473, subdivision (d), courts distinguish between orders that are void on the face of the record and orders that appear valid on the face of the record but are shown to be invalid through consideration of extrinsic evidence." (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1020.) When reviewing the family court's validity findings that are based upon findings of fact, we apply the substantial evidence standard of review. (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 461.) We apply the de novo standard when reviewing the family court's conclusions concerning facial invalidity of the order. (*Cruz v. Fagor America* (2007) 146 Cal.App.4th 488, 496.)

3. *ISSUE SANCTION*

Father asserts the modification order was void because the modification order was an issue sanction resulting from Father not participating in hearings at the family court and then appealing the family court's rulings.

The record reflects the family court modified child support based upon the changed circumstance that Father's income increased. (Fam. Code, § 3651; *In re Marriage of Bodo* (2011) 198 Cal.App.4th 373, 390 [changed circumstances].) The July 2014 child support order was based upon Father's monthly gross income being $1,305. In May 2017, the family court found Father's monthly gross income increased to $10,000. Thus, the modification of child support was based upon the finding that Father's income increased, which constituted a change in circumstances; the child

support modification was not an issue sanction. Accordingly, we conclude the family court did not err.

4. *CHANGE IN CIRCUMSTANCES*

Father contends the family court erred by denying his motion to vacate because the modification order was void due to Mother failing to show a change of circumstances. In particular, Father asserts Mother was required to file a declaration and she failed to meet that requirement. Father cites to California Rules of Court, rule 5.260 to support his contention.

California Rules of Court, rule 5.260(c) provides, in relevant part, "The supporting declaration submitted in a request to change a prior child, spousal, or domestic partner support order must include specific facts demonstrating a change of circumstances." A declaration is a writing declared to be true under penalty of perjury. (Code Civ. Proc., § 2015.5.)

In Mother's request to modify child support she wrote, under penalty of perjury, "[Father] is self employed and I believe that he is now making more money and child support should be adjusted accordingly. I am further requesting a forensic accounting be done on [Father's] business for both value and cash flow to determine his true income." Thus, the record reflects a declaration by Mother was included in her request to modify child support. Mother declared that Father's income had increased. The increased income was Mother's basis for arguing there had been change in circumstances. Mother did not know the precise extent to which Father's income had increased, which is why she requested a forensic accounting. In sum, the record reflects

Mother provided a declaration with her request. Accordingly, the family court did not err by denying Father's motion to vacate.

5. *WRITTEN REQUEST FOR CHILD SUPPORT*

Father asserts the family court erred by denying his motion to vacate because the modification order was void due to Mother failing to make a written request to modify child support. Father asserts Mother only requested a forensic accounting of his business.

Mother's two requests were made on a single Judicial Council form (FL-300). On the first page of the form Mother marked the boxes for (1) "Change," (2) "Child Support," and (3) "Other." Next to the "Other" box, Mother wrote "forensic accounting of [Father's] business." On the third page of the form, Mother checked the box next to the line reading: "I want to change a current order for child support filed on (date): July 7, 2014[.] The court ordered child support as follows (specify): $338 per month payable by [Father] to [Mother]." The form has a line that reads, "The court should make or change the support orders because (specify)." Under that line, Mother wrote, "It is believed that [Father's] income has went up." On the fourth page of the form, in Mother's declaration, she wrote, "I am requesting that the court modify child support. [Father] is self employed and I believe that he is now making more money and child support should be adjusted accordingly." Mother repeated her request for a modification of child support throughout the judicial council form. Therefore, we conclude Mother requested a modification of child support in writing. As a result, the family court did not err by denying Father's motion to vacate.

6. *WRITTEN MONTHLY INCOME*

Father contends the family court erred by denying his motion to vacate because the modification order was void due to Mother not indicating in her written request to modify child support that Father's monthly income was $10,000.

Mother filed an income and expense declaration in November 2016, along with her request to modify child support. Mother used Judicial Council form FL-150 for her income and expense declaration. On the first page of the form, there is a line that reads, "Other party's income. I estimate the gross monthly income (before taxes) of the other party in this case at (specify)." Next to that line, Mother wrote, "$10,000." At the hearing on Mother's request to modify child support, Mother said the $10,000 per month estimate was based upon (1) Mother's knowledge from the time she was married to Father; and (2) a private investigator's report reflecting Father charged customers approximately $200 per hour for labor. Thus, the record reflects Mother asserted, in writing, that Father was earning $10,000 per month. Accordingly, we conclude the family court did not err by denying Father's motion to vacate.

7. *FORENSIC ACCOUNTANT*

Father contends the family court erred by denying his motion to vacate because the order modifying child support was void in that the family court lacked the authority to appoint a forensic accountant for a postjudgment modification.

Evidence Code section 730 provides, in relevant part, "When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on

motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required." It has been held that the phrase "at any time before or during the trial of an action" (Evid. Code, § 730), does not include posttrial hearings. (*People v. Stuckey* (2009) 175 Cal.App.4th 898, 913.)

We will assume, without deciding, that modifying a child support order does not fall within the meaning of "at any time before or during the trial of an action." We now turn to the issue of prejudice. (*F.P. v. Monier* (2017) 3 Cal.5th 1099, 1107 [prejudice required for reversal].) "The *Watson*[1] standard applies in both criminal and civil cases, and requires appellate courts to 'examine "each individual case to determine whether prejudice actually occurred in light of the entire record." ' " (*Conservatorship of Maria B.* (2013) 218 Cal.App.4th 514, 532.) Under the *Watson* standard, the appellant must "demonstrate that 'it is reasonably probable that a result more favorable to [the appellant] would have been reached in the absence of the error.' " (*People v. Blackburn* (2015) 61 Cal.4th 1113, 1132.)

At the May 16 hearing in which the family court ordered the modification of child support, a forensic accounting was not in evidence. During the hearing, Mother's attorney said to the family court, "[At the] prior hearing, the other judge had ordered a 730 evaluation." The family court responded, "Yeah, but [Father is] not participating."

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1 *People v. Watson* (1956) 46 Cal.2d 818.

It appears from the record that the forensic accounting of Father's business never occurred due to Father's failure to participate in the case. Therefore, to the extent the family court lacked the authority to order the forensic accounting (Evid. Code, § 730), we conclude Father has not demonstrated prejudice because it appears the forensic accounting never happened.

8. *DUE PROCESS*

Father contends his federal and state constitutional rights of due process were violated by a lack of notice of the child support modification hearing that took place on May 16, 2017. It is unclear to which of Father's motions this appellate argument pertains, e.g., the motions to strike, the motion to vacate, or the motions to quash. Father raised a similar constitutional argument in his motion to vacate. Therefore, we will deem this contention as relating to Father's motion to vacate.

a. Father's Attorney

Father contends the family court erred by denying his motion to vacate because Mother failed to serve her documents on Father's attorney of record, Mr. Isles.

"[A]fter entry of a judgment of dissolution of marriage . . . or after a permanent order in any other proceeding in which there was at issue the visitation, custody, or support of a child, no modification of the judgment or order, and no subsequent order in the proceedings, is valid unless any prior notice otherwise required to be given to a party to the proceeding is served . . . upon the party. For the purposes of this section, service upon the attorney of record is not sufficient." (Fam. Code, § 215, subd. (a).)

On August 22, 2006, Mr. Isles filed a motion to be relieved as Father's counsel. On October 6, 2006, the family court held a hearing on Mr. Isles's motion to be relieved, and the family court granted the motion. Father was self-represented at October, November, and December 2007 hearings concerning child support, spousal support, and attorney's fees. Nevertheless, for a July 7, 2008, hearing, the family court printed a notice for Mr. Isles. Father was self-represented at the July 7 hearing.

It appears that, despite Mr. Isles being relieved as counsel, the family court failed to remove Mr. Isles from its records and therefore continued sending notices to Mr. Isles after October 2006. The family court's case report is contradictory. For example, the family court's case report reflects: (A) for one dissolution petition in this case, (i) Father is the petitioner and is self-represented, and (ii) Mother is the respondent and is represented by the Law Offices of Ann-Marie Fritz; and (B) for a second dissolution petition in this case, (i) Mother is the petitioner and is self-represented, and (ii) Father is the respondent and is self-represented and is represented by the Law Offices of Richard K. Isles. It appears, from the record that the foregoing "(A)" version of the case report is correct because, in the May 2018 findings and order after hearing, Father is listed as a self-represented petitioner, and Mother is listed as the respondent, who is represented by the Law Office of Ann-Marie Fritz.

Father supports his assertion that Mr. Isles was his attorney of record by citing the contradictory case report. Father asserts there is no court order relieving Mr. Isles. As set forth *ante*, the record reflects Mr. Isles was relieved as Father's counsel on October 19, 2006. Father was present at the hearing when Mr. Isles was relieved as

Father's counsel. (Code Civ. Proc., § 284, subd. (2).) Given (1) the case report is contradictory; (2) the record supports the version of the case report reflecting Father is self-represented; (3) the record reflects Mr. Isles was relieved as Father's counsel; (4) Father was present at the hearing when Mr. Isles was relieved as Father's counsel; and (5) Mr. Isles stopped appearing at hearings on behalf of Father, we conclude the record reflects that Mr. Isles was not Father's attorney. Therefore, the family court properly concluded the modification order was not void, and did not err by denying Father's motion to vacate.

b. Timely Notice

Father contends the family court erred by denying his motion to vacate because his right of due process was violated by Mother failing to provide timely notice of the May 16, 2017, hearing to modify child support.

"[A]ll moving and supporting papers shall be served and filed at least 16 court days before the hearing. . . . However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California." (Code Civ. Proc., § 1005, subd. (b).)

A proof of personal service reflects Father was personally served with Mother's request for a child support modification by a registered California process server on January 13, 2017. On January 31, the family court continued the modification request to March 28. On March 28, the family court continued the hearing on Mother's request to May 16. The family court issued a minute order reflecting, "Hearing continued to

05/16/17 at 08:30 in department F402." On April 3, notice of the May 16 hearing date was mailed to Father, in San Bernardino, from Riverside. April 3 is more than 16 court days and five calendar days before May 16. (Code Civ. Proc., § 1005, subd. (b).) Accordingly, we conclude Mother provided timely service of the notice of the May 16 hearing. Father's right of due process was not violated, and the family court did not err by denying Father's motion to vacate.

c. Zip Code

Father contends the family court erred by denying his motion to vacate because his right of due process was violated by Mother mailing the notice of the May 16 hearing to an incorrect zip code.

" '[Code of Civil Procedure s]ection 1013, subdivision (a), provides that the mailing of a notice is complete when it is posted in an envelope "addressed to the person on whom it is to be served, at his office address as last given by him on any document which he has filed in the cause and served on the party making service by mail; otherwise at his place of residence." ' [Citations.] '[S]trict compliance with statutory provisions for service by mail is required, and improper service will be given no effect.' " (*Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 288 (*Moghaddam*).)

On June 20, 2009, a qualified domestic relations order (QDRO) was filed in the case by Father's attorney. In that document, Father's address is listed as "P.O. Box 542 [¶] San Bernardino, CA 92402." In June 2014, Father filed an income and expense declaration listing the same address.

On March 28, 2017, the family court held a hearing on Mother's request to modify child support. Father was not present at the hearing. Mother's attorney "discussed [issues] with the Court." The court ordered Father to file and serve an income and expense declaration 10 days prior to the next hearing. The court continued the hearing to May 16. Connie Billings mailed a copy of the March 28 minute order to Father at P.O. Box 542 San Bernardino, CA 92401. Mother's attorney drafted a notice to Father reflecting (1) the March 28 hearing was continued to May 16; and (2) Father was ordered to file an income and expense declaration at least 10 days prior to May 16. Connie Billings mailed the notice to Father at P.O. Box 542 San Bernardino, CA 92401.

In *Moghaddam*, the appellate court wrote, "Notice of an appealable judgment or order mailed to an incorrect address is not sufficient to constitute legal notice. [Citation.] A copy of the December 22, 2004 order setting aside the default and default judgment was sent by the Bones to Moghaddam at the correct post office box, but with the wrong zip code. The correct zip code, as written on Moghaddam's original complaint, is 92623. However, notice was sent to an address with the zip code 92653. In the absence of proof notice was actually received, the Bones' failure to use the correct zip code invalidates what would have otherwise been sufficient notice." (*Moghaddam, supra,* 142 Cal.App.4th at p. 288.)

Under *Moghaddam*, Mother's notice to Father of the May 16 continued hearing date was insufficient because Mother mailed the notice to an incorrect zip code. However, Mother's attorney's failure to mail the notice of the continued hearing date to Father's correct address does not necessarily mean that Father lacked notice of the May

16 hearing. "As a general rule, in civil actions, when proper notice has been provided in the first instance and a party fails to appear, the court may continue the trial without requiring further notice to the absent party. The properly noticed party has a duty to exercise diligence to inform himself or herself of subsequent continuances of the trial." (*In re Phillip F.* (2000) 78 Cal.App.4th 250, 257.)

A proof of personal service reflects a registered California process server personally served Father with Mother's request for a child support modification on January 13, 2017. Mother included the original January 31, 2017, hearing date on her notice. Thus, Father was placed on notice that he needed to check the court's docket for activity in the case on January 31. Had Father checked the case docket, then he would have seen the minute order reflecting the January 31 hearing was continued to March 28. Had Father checked the March 28 case docket, then he would have seen the minute order reflecting the March 28 hearing was continued to May 16. Because Father received notice of the January 31 hearing, he had constructive notice of the continued May 16 hearing. (Civ. Code, §§ 18 [types of notice], 19 [constructive notice]; *Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 554, fn. 13 ["the court concluded that if she had been in attendance at the time originally scheduled, she would have heard the notice of the continued date, and thus she had constructive notice of the continued date"]; *In re Bell's Estate* (1943) 58 Cal.App.2d 333, 336 ["After notice has been properly given in the first instance, it becomes the duty of all interested parties to keep themselves informed by diligent inquiry of subsequent continuances of the hearing"].)

Father asserts that Mother's notice for the January 31 hearing reflected the hearing would occur in Department F501, when it actually occurred in Department F402. To the extent Father is asserting that he did not have notice of the January 31 hearing because the wrong Department was noticed, such an argument is unpersuasive. Father did not assert that he physically went to Department F501 on January 31, missed the hearing in Department F402 as a result of waiting in Department F501, and therefore was under a mistaken impression that nothing occurred on January 31. In other words, the error in the Department number appears to be of no consequence because Father did not go to Department F501 on January 31.

DISPOSITION

The order is affirmed. Appellant, Maurice Gilbert, is to bear his own costs on appeal.[2] (Cal. Rules of Court, rule 8.278(a)(5).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.

[2] Respondent, Isabel Barrios-Gilbert, has not made an appearance in this court. Therefore, we do not award her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)